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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/777,257  | 02/12/2004  | Joachim Koerner      | Ruff 19             | 5395             |
| 23474   | 7590        | 12/13/2004           | EXAMINER            |                  |
| FLYNN THIEL BOUTELL & TANIS, P.C.<br>2026 RAMBLING ROAD<br>KALAMAZOO, MI 49008-1699 |             |                      | PATEL, NIHIR B      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3743                |                  |

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                               |                                |  |
|------------------------------|-------------------------------|--------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/777,257 | Applicant(s)<br>KOERNER ET AL. |  |
|                              | Examiner<br>Nihir Patel       | Art Unit<br>3743               |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11.22.2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6 and 7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08.02.2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species I (figures 1 and 2; claims 1-3 and 6-7) in the reply filed on November 22<sup>nd</sup>, 2004 is acknowledged.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Hess et al. US Patent No. 6,196,219. Referring to claim 1, Hess discloses a liquid droplet spray device for an inhaler suitable for respiratory therapies that comprises micro-dosing device 5 with a dosing chamber 9 for the at least partial reception of a liquid quantity and with which is associated at least one discharge opening 14, as well as with a vibrating unit 10 in operative connection with at least one boundary surface of the dosing chamber in order to vibrate the same

Art Unit: 3743

for discharge process, and with a delivery function unit, connected to the vibrating unit 10, for activating the latter during a delivery time period, wherein in addition a drying function unit is provided (see column 7 lines 15-25), which can be activated in time separated manner with respect to the delivery function unit in order to remove liquid residues from the dosing chamber (see figures 2 through 5).

Referring to claim 2, Hess discloses an apparatus wherein the drying function unit is connected to the vibrating unit in order to activate the latter for a drying process (see column 6 lines 62-67 and column 7 lines 1 through 25).

Referring to claim 3, Hess discloses an apparatus wherein the delivery function unit and drying function unit are parts of a common electronic control device, which is provided with a time function element for coordinating the time separated activating processes of the vibrating unit by the delivery function unit and the drying function unit (see figure 5 and column 7 lines 1 through 45).

Referring to claim 6, Hess discloses a liquid droplet spray device for an inhaler suitable for respiratory therapies that comprises method for dosing small liquid quantities by the vibration of at least one boundary surface of a dosing chamber 9 by activating and deactivating a vibrating unit 10, wherein the vibrating unit 10 is activated for a delivery time period for the discharge of the liquid quantity and is then deactivated and after deactivating the vibrating unit 10 liquid residues remaining in the dosing chamber are removed therefrom by a drying process (see figures 2 through 5 and column 6 and 7).

Referring to claim 7, Hess discloses a method wherein the vibrating unit 10 is again activated over a drying time period for the drying process.

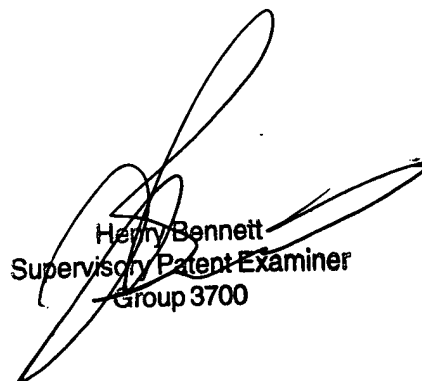
Art Unit: 3743

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
December 3<sup>rd</sup>, 2004

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700